



February 3, 1999

# HOUSE BILL No. 1367

DIGEST OF HB1367 (Updated February 2, 1999 9:49 am - DI 69)

**Citations Affected:** IC 32-8; noncode.

**Synopsis:** Construction contracts. Provides that the following provisions are void in a construction contract (other than a contract for the construction, alteration, or repair of a family dwelling unit or units intended for long term residential occupancy): (1) An agreement that subcontractors, mechanics, journeymen, laborers, or persons performing labor or furnishing materials or machinery for construction on real estate waive rights to hold a lien or to a claim against a payment bond. (2) A provision making the contract subject to the laws of another state or requiring that any litigation, arbitration, or other dispute resolution process on the contract occur in another state. Provides that "no lien" contracts may only be included in a construction  
(Continued next page)

**Effective:** July 1, 1999.

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## Kuzman, Whetstone

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January 12, 1999, read first time and referred to Committee on Judiciary.  
February 2, 1999, reported — Do Pass.

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contract for the construction, alteration, or repair of a family dwelling unit or units intended for long term residential occupancy. Requires a mortgage provided by a supervised financial institution, an insurance company, a pension fund, or other lender to have priority over all mechanic's liens to the extent of funds actually owed to the lender for the specific project to which lien rights relate.

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February 3, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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## HOUSE BILL No. 1367

A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 32-8-3-1 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) That contractors,  
3 subcontractors, mechanics, lessors leasing construction and other  
4 equipment and tools, whether or not an operator is also provided by the  
5 lessor, journeymen, laborers and all other persons performing labor or  
6 furnishing materials or machinery, including the leasing of equipment  
7 or tools used, for the erection, altering, repairing or removing any  
8 house, mill, manufactory, or other building, bridge, reservoir, systems  
9 of waterworks, or other structures, or for construction, altering,  
10 repairing, or removing any walk or sidewalk, whether such walk or  
11 sidewalk be on the land or bordering thereon, stile, well, drain,  
12 drainage ditch, sewer or cistern or any other earth-moving operation  
13 may have a lien separately or jointly upon the house, mill, manufactory  
14 or other building, bridge, reservoir, system of waterworks or other  
15 structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer or

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1 cistern or earth which they may have erected, altered, repaired, moved  
 2 or removed or for which they may have furnished materials or  
 3 machinery of any description, and, on the interest of the owner of the  
 4 lot or parcel of land on which it stands or with which it is connected to  
 5 the extent of the value of any labor done, material furnished, or either,  
 6 including any use of such leased equipment and tools, and all claims  
 7 for wages of mechanics and laborers employed in or about any shop,  
 8 mill, wareroom, storeroom, manufactory or structure, bridge, reservoir,  
 9 system of waterworks or other structure, sidewalk, walk, stile, well,  
 10 drain, drainage ditch or cistern or any other earth-moving operation  
 11 shall be a lien on all the machinery, tools, stock or material, work  
 12 finished or unfinished, located in or about such shop, mill, wareroom,  
 13 storeroom, manufactory or other building, bridge, reservoir, system of  
 14 waterworks, or other structure, sidewalk, walk, stile, well, drain,  
 15 drainage ditch, sewer, or cistern, or earth or used in the a business.  
 16 thereof; and should

17 (b) If the person, firm, limited liability company, or corporation be  
 18 described in subsection (a) is in failing circumstances, the above  
 19 mentioned claims described in subsection (a) shall be preferred debts  
 20 whether a claim or notice of lien has been filed or not.

21 (c) A provision or stipulation described by this subsection may  
 22 only be included in a construction contract for the construction,  
 23 alteration, or repair of a family dwelling unit or units intended for  
 24 long term residential occupancy by a person or persons, such as  
 25 single family residences, duplexes, condominiums, and apartment  
 26 buildings. No provision or stipulation in the contract of the owner and  
 27 principal contractor that no lien shall attach to the real estate, building,  
 28 structure or any other improvement of the owner shall be valid against  
 29 subcontractors, mechanics, journeymen, laborers or persons performing  
 30 labor upon or furnishing materials or machinery for such property or  
 31 improvement of the owner, unless the contract containing such  
 32 provision or stipulation shall be in writing, and shall contain specific  
 33 reference, by legal description of the real estate to be improved and  
 34 shall be acknowledged as provided in case of deeds and filed and  
 35 recorded in the recorder's office of the county in which such real estate,  
 36 building, structure or other improvement is situated not more than five  
 37 (5) days after the date of execution of such contract. The contract  
 38 herein provided for shall be without effect upon labor, material or  
 39 machinery supplied prior to the time of the filing with the recorder of  
 40 said contract. The recorder shall record such contract at length in the  
 41 order of time of its reception in books provided by him for that  
 42 purpose, and the recorder shall index the same in the name of the



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1 contractor and in the name of the owner, in books kept for that purpose,  
 2 and said recorder shall receive therefor a fee such as is provided for the  
 3 recording of deeds and mortgages in his office.

4 (d) Any person, firm, partnership, limited liability company, or  
 5 corporation ~~who that~~ sells or furnishes on credit any material, labor or  
 6 machinery for the alteration or repair of any owner-occupied single or  
 7 double family dwelling or the appurtenances or additions ~~thereto, to~~  
 8 **the dwelling**, to any contractor, subcontractor, mechanic, or anyone  
 9 other than the occupying owner or ~~his the owner's~~ legal representative  
 10 shall furnish to the occupying owner of ~~said the~~ parcel of land where  
 11 the material, labor or machinery is delivered, a written notice of the  
 12 delivery or work and of the existence of lien rights, within thirty (30)  
 13 days from the date of first delivery or labor performed. The furnishing  
 14 of ~~such the~~ notice shall be a condition precedent to the right of  
 15 acquiring a lien upon ~~such the~~ lot or parcel of land or the improvement  
 16 ~~thereon. on the lot or parcel of land.~~

17 (e) Any person, firm, partnership, limited liability company, or  
 18 corporation ~~who that~~ sells or furnishes on credit any material, labor or  
 19 machinery, for the original construction of a single or double family  
 20 dwelling for the intended occupancy of the owner upon whose real  
 21 estate the construction takes place to any contractor, subcontractor,  
 22 mechanic, or anyone other than the owner or ~~his the owner's~~ legal  
 23 representatives shall furnish the owner of the real estate as named in  
 24 the latest entry in the transfer books described in IC 6-1.1-5-4 of the  
 25 county auditor, or if IC 6-1.1-5-9 applies, the transfer books of the  
 26 township assessor with a written notice of the delivery or labor and the  
 27 existence of lien rights within sixty (60) days from the date of the first  
 28 delivery or labor performed and shall file a copy of the written notice  
 29 in the recorder's office of the county within sixty (60) days from the  
 30 date of the first delivery or labor performed. The furnishing of such  
 31 notice shall be a condition precedent to the right of acquiring a lien  
 32 upon ~~such the~~ real estate or upon the improvement constructed ~~thereon.~~  
 33 **on the real estate.**

34 (f) ~~No~~ A lien for material or labor in original construction ~~shall may~~  
 35 **not** attach to real estate purchased by an innocent purchaser for value  
 36 without notice, ~~provided said if the~~ purchase is of a single or double  
 37 family dwelling for occupancy by the purchaser, unless notice of  
 38 intention to hold ~~such the~~ lien ~~be is~~ recorded as provided in this  
 39 chapter prior to the recording of the deed by which ~~such the~~ purchaser  
 40 takes title.

41 SECTION 2. IC 32-8-3-5 IS AMENDED TO READ AS FOLLOWS  
 42 [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) **As used in this section,**

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- 1       **"lender" refers to:**  
2           **(1) a supervised financial organization (as defined in**  
3           **IC 24-4.5-1-301); or**  
4           **(2) an insurance company, a pension fund, or any other entity**  
5           **that has the authority to make loans.**  
6       **(b) The recorder shall record the notice, when presented, in the**  
7       **miscellaneous record book, for which the recorder shall charge a fee in**  
8       **accordance with IC 36-2-7-10. All liens so created shall relate to the**  
9       **time when the mechanic or other person began to perform the labor or**  
10       **furnish the materials or machinery, and shall have priority over all liens**  
11       **suffered or created thereafter, except the liens of other mechanics and**  
12       **materialmen, as to which there shall be no priority, and except the**  
13       **mortgage of a lender to the extent of amounts actually owed to the**  
14       **lender for the specific project to which the lien rights relate. The**  
15       **mortgage of the lender shall have priority over all mechanic's liens**  
16       **under this chapter to the extent of funds actually owed to the**  
17       **lender for the specific project to which lien rights relate.**  
18       SECTION 3. IC 32-8-3-16 IS ADDED TO THE INDIANA CODE  
19       AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
20       1, 1999]: **Sec. 16. (a) This section applies to the following:**  
21           **(1) A construction contract for the construction, alteration, or**  
22           **repair of structures intended for short term occupancy such**  
23           **as hotels and motels.**  
24           **(2) A construction contract that is not described in subsection**  
25           **(b).**  
26       **(b) This section does not apply to a construction contract for the**  
27       **construction, alteration, or repair of a family dwelling unit or units**  
28       **intended for long term residential occupancy by a person or**  
29       **persons, such as single family residences, duplexes, condominiums,**  
30       **and apartment buildings.**  
31       **(c) The following provisions in a contract for the improvement**  
32       **of real estate in Indiana are void:**  
33           **(1) A provision requiring a person described in section 1 of**  
34           **this chapter who furnishes labor, materials, or machinery to**  
35           **waive a right to a construction lien or to a claim against a**  
36           **payment bond before the person is paid for the labor or**  
37           **materials furnished.**  
38           **(2) A provision making the contract subject to the laws of**  
39           **another state or requiring that any litigation, arbitration, or**  
40           **other dispute resolution process on the contract occur in**  
41           **another state.**  
42       SECTION 4. [EFFECTIVE JULY 1, 1999] **This act applies only to**

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1 **contracts and subcontracts entered into or renewed after June 30,**  
2 **1999.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1367, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

VILLALPANDO, Chair

Committee Vote: yeas 13, nays 0.

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